



655 Fifteenth Street, NW, Suite 225
Washington, DC 20005

balljanik.com

t 202.638.3307
f 202.783.6947

233780

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FEB 11 2013

February 11, 2013

**SURFACE
TRANSPORTATION BOARD**

Karl Morell
Of Counsel
kmorell@balljanik.com

EXPEDITED HANDLING REQUESTED



BY HAND DELIVERY

Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

Re: Docket No. AB-991 (Sub-No. 1X), Yellowstone Valley Railroad, L.L.C. -
Discontinuance of Lease and Trackage Rights Operations Exemption -- In
Richland, Sheridan, Roosevelt and Daniels Counties, Montana and
McKenzie County, North Dakota

Dear Ms. Brown:

Attached for filing are the original and ten copies of a Petition for Exemption
under 49 U.S.C. § 10502. Also attached is a check covering the \$6,500 filing fee.

Please time and date stamp the extra copy of the Petition and return it with our
messenger.

If you have any questions, please call me.

Sincerely,

Karl Morell
Of Counsel

Enclosures

**ENTERED
Office of Proceedings**

FEB 11 2013

**Part of
Public Record**

FILED
FEB 11 2013
**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 991 (SUB-NO. 1X)

YELLOWSTONE VALLEY RAILROAD, L.L.C.
-- DISCONTINUANCE OF LEASE AND TRACKAGE RIGHTS
OPERATIONS EXEMPTION --
IN RICHLAND, SHERIDAN, ROOSEVELT AND DANIELS COUNTIES, MONTANA AND
MCKENZIE COUNTY, NORTH DAKOTA

PETITION FOR EXEMPTION

EXPEDITED HANDLING REQUESTED

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FEB 11 2013

**SURFACE
TRANSPORTATION BOARD**

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FEB 11 2012
**SURFACE
TRANSPORTATION BOARD**

Karl Morell
Of Counsel
Ball Janik LLP
655 Fifteenth Street., N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorney for: Yellowstone Valley
Railroad, L.L.C.

ENTERED
Office of Proceedings

FEB 11 2013

**Part of
Public Record**

Dated: February 11, 2013

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. AB 991 (SUB-NO. 1X)

**YELLOWSTONE VALLEY RAILROAD, L.L.C.
-- DISCONTINUANCE OF LEASE AND TRACKAGE RIGHTS
OPERATIONS EXEMPTION --
IN RICHLAND, SHERIDAN, ROOSEVELT AND DANIELS COUNTIES, MONTANA AND
MCKENZIE COUNTY, NORTH DAKOTA**

PETITION FOR EXEMPTION

Yellowstone Valley Railroad, L.L.C. ("YVRR")¹ petitions the Surface Transportation Board ("STB" or "Board") to exempt, under 49 U.S.C. § 10502, from the prior approval requirements of 49 U.S.C. § 10903, YVRR's discontinuance of lease operations and discontinuance of overhead trackage rights over four sections of track owned by BNSF Railway Company ("BNSF").

PROPOSED TRANSACTION

YVRR proposes to discontinue its lease operations over two sections of rail lines owned by BNSF and located between: (1) milepost 43.0, in Cranc, MT, and milepost 78.6, near Snowden, MT; and (2) milepost 0.93, near Bainville, MT, and milepost 100.3, near Scobey, MT (the "Leased Lines"). YVRR also seeks to discontinue its overhead trackage rights over two

¹ YVRR's name was formerly Yellowstone Valley Railroad, Inc. See STB Finance Docket No. 35439, *Watco Holdings, Watco Companies, and Watco Transp. Services – Corporate Family Transaction* (not printed), served November 4, 2010.

sections of rail lines owned by BNSF and located between (1) milepost 78.6, on the BNSF Sidney Subdivision near Snowden, MT, and milepost 0.93, on the BNSF Scobey Subdivision, near Bainville, MT, and (2) milepost 6.0, near Glendive, MT, and milepost 0.0, at Glendive, MT (the "Trackage Rights Lines"). The Leased Lines and the Trackage Rights Lines traverse U.S. Postal Service Zip Codes 59212, 59217, 59221, 59222, 59226, 59330, 59242, 59247, 59254, 59257, 59258, 59263, and 59270. A map of the Leased Lines and Trackage Rights Lines is attached as Exhibit A.

Based on information in YVRR's possession, it appears that the Leased Lines and Trackage Rights Lines do contain some federally granted right-of-way. Any documentation in YVRR's possession will be made available to those requesting it.

STATEMENT OF FACTS

YVRR leased the Leased Lines and acquired the overhead trackage rights in 2005. *See* STB Finance Docket No. 34737, *Yellowstone Valley Railroad, Inc. – Lease and Operation Exemption – BNSF Railway Company* (not printed), served September 1, 2005. Operations over the portion of the leased lines located between milepost 6.0, near Glendive, and milepost 43.0, at Crane were discontinued pursuant to the Board's decision in Docket No. AB 991X, *Yellowstone Valley Railroad, L.L.C. – Discontinuance of Service Exemption – in Dawson and Richland Counties, Mont.* (not printed), served June 28, 2011.

Once service between Glendive and Crane was discontinued, YVRR no longer had any need for the overhead trackage rights south of milepost 6.0. YVRR seeks to discontinue operations over the Leased Lines so that BNSF can once again resume operations over those lines. Once service is discontinued over the Leased Lines, YVRR will no longer have any need

for the overhead trackage rights between milepost 78.6, on the BNSF Sidney Subdivision near Snowden, MT. and milepost 0.93. on the BNSF Scobey Subdivision, near Bainville, MT.

YVRR currently serves 23 customers on the Leased Lines. After the requested discontinuance is granted, YVRR will continue to operation as a common carrier terminal carrier on tracks owned by YVRR in Dore, North Dakota ²

EXPEDITED HANDLING REQUESTED

YVRR respectfully urges the Board to process this Petition as expeditiously as possible and to make the exemption effective on the date of service of the Board's decision. Word has already spread that YVRR will be discontinuing its operations over the Leased Lines and Trackage Rights Lines. YVRR is very concerned that it will soon start to lose employees which would adversely impact its ability to provide service, much less adequate service, to its customers on the Leased Lines. To avert such potential disruptions in service, YVRR seeks to turn back operations to BNSF as quickly as possible. YVRR is serving a copy of this petition on all active YVRR customers on the Leased Lines.

EXEMPTION REQUESTED

A rail carrier may not discontinue lease and trackage rights operations without the prior approval of the Board. 49 U.S.C. § 10903(d); *see also Thompson v Texas Mexican Ry. Co* , 328 U S 134 (1946).

Under 49 U.S.C. § 10502, however, the Board must exempt a transaction from regulation when it finds that:

² YVRR constructed these tracks as team tracks while leasing the Leased Lines from BNSF. Consequently, no Board construction authority was required. *See* 49 U.S.C. § 10906. Once YVRR's operations over the BNSF tracks are discontinued, YVRR will convert its operations over the tracks in Dore to common carrier transload and terminal switching operations.

(1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and

(2) either:

(a) the transaction is of limited scope, or

(b) regulation is not necessary to protect shippers from the abuse of market power

The legislative history of Section 10502 reveals a clear Congressional intent that the STB should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the STB's predecessor to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). *See also Exemption From Regulation – Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. 422, 104th Cong., 1st Sess. 168-69 (1995)

A. The Application Of 49 U.S.C. § 10903 Is Not Necessary to Carry Out The Rail Transportation Policy

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expenses associated with the filing of a formal discontinuance application, expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. §§ 10101(2) and (7)]. *See, e.g., Norfolk & W. Ry. Co. – Abandonment Exem. – Cinn., Hamilton County, OH*, 3 S.T.B. 110 (1998); STB Docket No. AB-367 (Sub-No. 2X), *Georgia Central Railroad, L.P. – Abandonment Exemption – In Chatham County, GA* (not printed), served September 17, 1997 (“*Georgia Central*”). An exemption would also provide for the expeditious handling and resolution of proceedings brought before the Board [49 U.S.C. § 10101(15)]. Granting YVRR’s Petition will also facilitate the development and continuation of a sound rail transportation system with effective competition among rail carriers [49 U.S.C. § 10101(4)]. Because BNSF will resume its operations over the Leased Lines, YVRR’s service will no longer be needed. Thus, granting the exemption will foster sound economic conditions and encourage efficient management. 49 U.S.C. §§ 10101(5) and (9). *See, e.g., STB Docket No. AB-318 (Sub-No. 4X), Louisiana & Delta Railroad, Inc. – Abandonment Exemption – In Lafourche and Assumption Parishes, LA* (not printed), served August 26, 1997; STB Docket No. AB-497 (Sub-No. 1X), *Minnesota Northern Railroad, Inc. – Abandonment Exemption – In Red Lake and Polk Counties, MN* (not printed), served November 14, 1997. Other aspects of the rail transportation policy are not affected adversely since BNSF will simply resume the service it provided before YVRR leased the lines.

Where, as here, the trackage rights are simply overhead and no local service is affected, the Board and its predecessor, the Interstate Commerce Commission, have consistently held that formal regulation of the discontinuance is not necessary to carry out the rail transportation

policy See, e.g., Docket No. AB-102 (Sub-No. 25X), *Missouri-Kansas-Texas R. Co. – Exemption – Discontinuance of Trackage Rights in Labette and Cherokee Counties, KS* (not printed), served February 9, 1990. See also Docket No. AB-6 (Sub-No. 347X), *Burlington Northern R. Co. – Abandonment and Discontinuance of Trackage Rights Exemption – In Greene, Sumter, Choctaw, Washington and Mobile, AL* (not printed), served July 6, 1993; Docket No. AB-6 (Sub-No. 340X), *Burlington Northern R. Co. – Discontinuance of Trackage Rights Exemption – Between East Dubuque, IL and Dubuque, IA* (not printed), served September 1, 1992.

B. This Transaction Is Of Limited Scope

In determining whether a proposed transaction is of limited scope, the Board considers a variety of factors, such as the length of the rail line, the number of shippers on the line and the traffic volume. See, e.g., Docket No. AB-347 (Sub-No. 1X), *Florida West Coast Railroad Company – Abandonment Exemption – Gilchrist and Levy Counties, FL* (not printed), served January 16, 1992; Docket No. AB-6 (Sub-No. 349X), *Burlington Northern Railroad Company – Abandonment Exemption – In Greene and Polk Counties, MO* (not printed), served August 27, 1993.

The proposed transaction is of limited scope. YVRR seeks to discontinue lease operations over approximately 134.97 miles of rail lines and discontinue overhead trackage rights over 28.2 miles of rail lines. The discontinuance of the trackage rights is clearly of limited scope. See Finance Docket No. 31088 and Docket No. AB-43 (Sub-No. 148X), *Southern Ry Co. and Norfolk Southern Corp. – Purchase – Illinois Central R. Co. Line between Fulton, KY and Haleyville, AL – And Trackage Rights – Illinois Central R. Co. Line between Fulton, KY and*

Centralia, IL (not printed), served May 9, 1988 (discontinuance of overhead trackage rights limited in scope).

While YVRR seeks to discontinue lease operations over a total of approximately 134.97 miles of rail line, the length of the track involved in a proposed discontinuance is not dispositive of whether the transaction or service is limited in scope. Docket No. AB-6 (Sub-No. 347), *Burlington Northern R. Co. – Abandonment and Discontinuance of Trackage Rights Exemption – In Greene, Sumter, Choctaw, Washington and Mobile Counties, AL* (not printed), served July 6, 1993 (“*BN Discontinuance*”) (length of line not necessarily dispositive). *See also Norfolk and Western Ry. Co. – Purchase – Illinois Terminal R. Co.*, 363 I.C.C. 882, 895 (1981) (abandonment of overhead trackage rights on line segments totaling more than 200 miles found of limited scope).

Of greater relevance to the “limited scope” issue is the number of shippers, if any, that would be adversely affected by the proposed discontinuance. *See, e.g., BN Discontinuance* (discontinuance limited in scope where traffic would be handled under a haulage arrangement); Docket No. AB-290 (Sub-No. 2X), *Southern Ry. Co. – Discontinuance of Trackage Rights Operations Between Greenwood and Piedmont, South Carolina* (not printed), served June 20, 1990 (transaction found to be limited in scope because shippers would be served by a new carrier).

As previously noted, there are only 23 active rail shippers located on the Leased Lines. Because BNSF will resume its former local service on the Leased Lines once YVRR stops service, not one shipper will lose service or otherwise be adversely affected by YVRR’s discontinuance of operations. Because the proposed discontinuance will not adversely affect rail service to any shipper, the proposed discontinuance should be found limited in scope.

C. This Transaction Will Not Result In An Abuse of Market Power

The proposed discontinuance of the lease operations will not reduce the number of competitive rail options available to any shipper. Because BNSF will resume service to the shippers on the Leased Lines, regulation is not necessary to protect shippers from an abuse of market power. *See* STB Docket No AB-566X, *Gateway Western Railway Company – Discontinuance of Service Exemption – In Jackson County, MO* (not printed), served July 21, 2000; STB Docket No AB-554X, *Perry County Port Authority D/B/A Hoosier Southern Railroad – Discontinuance Exemption – In Spencer County, IN* (not printed), served October 19, 1998).

Also, the trackage rights are overhead in nature YVRR is not able to serve any local shippers on the Trackage Rights Lines Therefore, regulation of the discontinuance of the trackage rights operations is not necessary to protect shippers from an abuse of market power. *See, e.g.,* STB Docket No. AB-55 (Sub-No. 576) *CSX Transportation, Inc. – Abandonment Exemption – In Guernsey County, OH* (not printed), served November 22, 1999, STB Docket No. AB-55 (Sub-No. 563X), *CSX Transportation, Inc. – Abandonment Exemption – In Harrison County, WV* (not printed), served September 25, 1998; *Georgia Central*.

ENVIRONMENTAL AND HISTORIC REPORTING REQUIREMENTS

This proceeding is exempt from environmental reporting requirements under 49 C.F.R § 1105.6(c)(6) and from historic reporting requirements under 49 C.F.R. § 1105.8(b)(3). *See* STB Docket No. AB-156 (Sub-No 25X), *Delaware and Hudson Railway Company, Inc – Discontinuance of Trackage Rights – In Susquehanna County, Pa and Broome, Tioga, Chemung, Steuben, Allegany, Livingston, Wyoming, Erie, and Genesee Counties, NY* (not printed), served January 19, 2005.

FEDERAL REGISTER NOTICE

A draft Federal Register notice is attached to this Petition as Exhibit B.

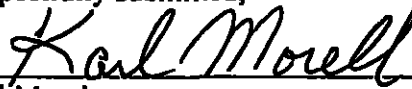
LABOR PROTECTION

The interests of railroad employees who may be adversely affected by the proposed discontinuance will be adequately protected by the labor protection conditions in *Oregon Short Line R Co. – Abandonment – Goshen*, 360 I.C.C 91 (1979).

CONCLUSION

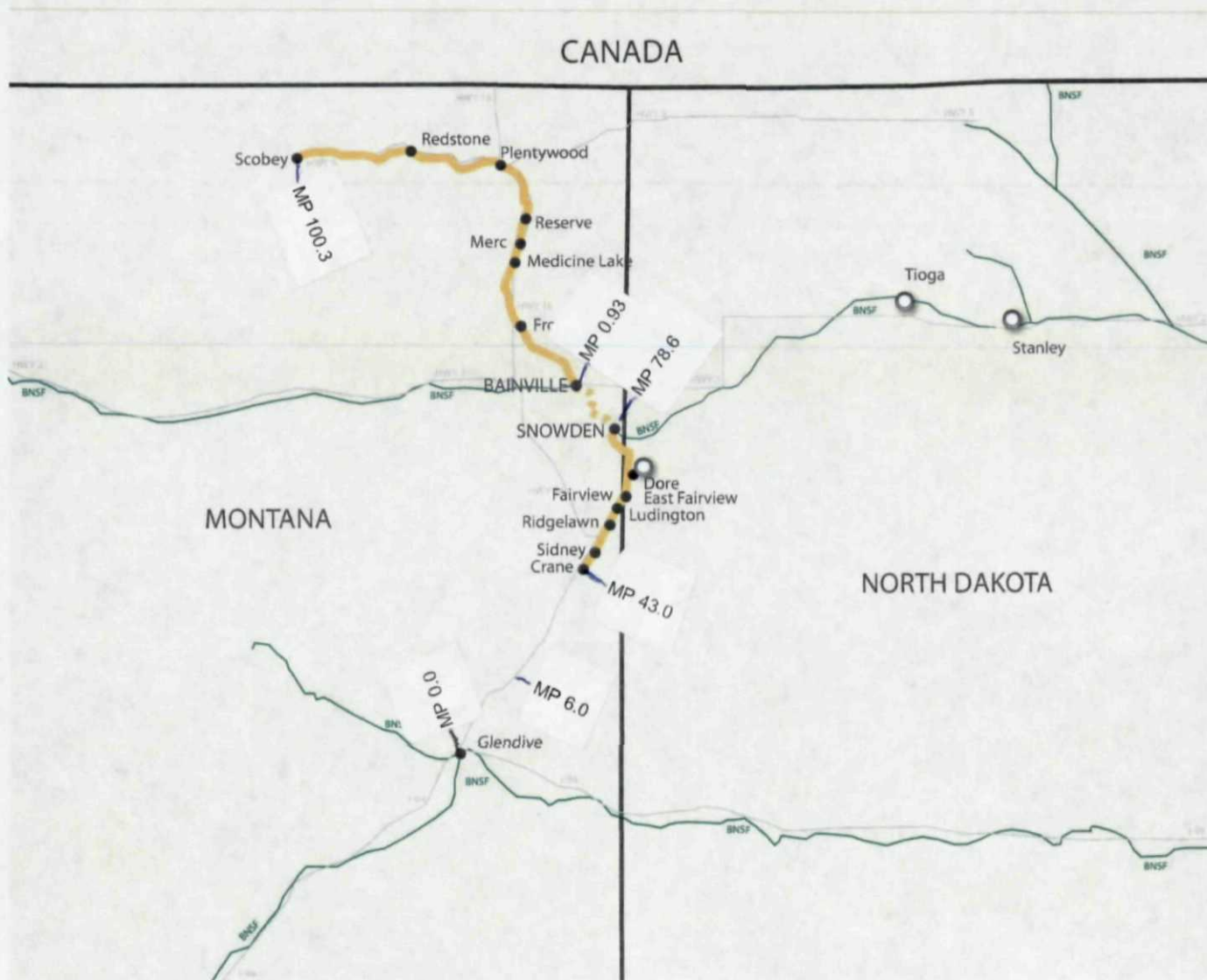
Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101, as previously described in this Petition. Nor is STB regulation required to protect shippers from the abuse of market power. Moreover, the proposed discontinuance is of limited scope. Accordingly, YVRR respectfully urges the Board to grant the discontinuance.

Respectfully submitted,


Karl Morel
Of Counsel
Ball Janik LLP
655 Fifteenth Street, N W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorney for: YELLOWSTONE VALLEY
RAILROAD, L.L.C.

Dated: February 11, 2013



LEGEND:

Yellowstone Valley RR (YSVR)

Yellowstone Valley Trackage Rights

Interchanges - Track miles 172

BNSF - Snowden, Bainville

○ Terminal/Warehouse Services

EXHIBIT A

EXHIBIT B

SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-991 (Sub-No. 1X)

**YELLOWSTONE VALLEY RAILROAD, L.L.C.
--DISCONTINUANCE OF LEASE AND TRackage RIGHTS
OPERATIONS EXEMPTION--**

**IN RICHLAND, SHERIDAN, ROOSEVELT AND DANIELS COUNTIES, MONTANA AND
MCKENZIE COUNTY, NORTH DAKOTA**

On February 11, 2013, Yellowstone Valley Railroad, L.L.C. (YVRR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for YVRR to discontinue lease operations over two sections of rail lines owned by BNSF Railway Company (BNSF) located between: (1) milepost 43.0, in Crane, MT, and milepost 78.6, near Snowden, MT; and (2) milepost 0.93, near Bainville, MT, and milepost 100.3, near Scobey, MT. YVRR also seeks to discontinue its overhead trackage rights over two sections of rail lines owned by BNSF and located between: (1) milepost 78.6, on the BNSF Sidney Subdivision near Snowden, MT, and milepost 0.93, on the BNSF Scobey Subdivision, near Bainville, MT; and (2) milepost 6.0, near Glendive, MT, and milepost 0.0, at Glendive, MT. The lines traverse U.S. Postal Service Zip Codes 59212, 59217, 59221, 59222, 59226, 59330, 59242, 59247, 59254, 59257, 59258, 59263, and 59270.

The lines contain some federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interests of railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by _____

This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b)(3).

Any offer of financial assistance for subsidy under 49 C.F.R. 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1,600. *See* 49 C.F.R. 1002.2(f)(25).

All filings in response to this notice must refer to Docket No. AB-991 (Sub-No. 1X) and must be sent to: (1) Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; and (2) Karl Morell, Of Counsel, Ball Janik LLP, 655 Fifteenth Street, N.W., Suite 225, Washington, DC 20005. Replies to the petition are due on or before _____, 2013.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238 or refer to the full discontinuance regulations at 49 C.F.R. Part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245-0305 [TDD for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV"

Decided: _____ 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings,

CERTIFICATE OF SERVICE

I hereby certify that, on this 11th day of February, 2013, I caused the foregoing Petition for Exemption to be served by first class mail, postage pre-paid on the following parties:

State Public Service Commission Montana Department of Transportation 2701 Prospect Avenue Helena, MT 59620 Montana Public Service Commission P.O. Box 202601 Helena, MT 59620-2601 North Dakota Public Service Commission 600 E. Boulevard, Dept. 408 Bismarck, ND 58505-0480	National Park Service Chief of National Recreation and Trails U.S. Dept. of Interior - Nat'l. Park Service Recreation Resources Assistance Division 1849 C Street, NW Washington, DC 20240-0001 National Park Service 12795 Alameda Parkway Denver, CO 80225 National Park Service 601 Riverfront Drive Omaha, NE 68102-4226
Military Traffic Management Command Military Surface Deployment & Distribution Command ATTN: SDTE-SA (Railroads for National Defense) 1 Soldier Way, Building 1900W Scott AFB, IL 62225-5006	U.S. Department of Agriculture U.S. Department of Agriculture Chief of the Forest Service 4th Floor N.W., Yates Building 201 14 th Street, S.W. Washington, DC 20250
Shippers Mr. Nathan Stortz Advantage Drilling Fluids PO Box 944 Glendive, MT 59330 Mr. Tom Stokes Anchor Drilling PO Box 287	Mr. Rod Luft Ag Land Coop PO Box 68 Froid, MT 59226 Mr. Brady Smelser Border Steel 2703 West Towne Street

Sidney, MT 59270

Mr. Jeremy Klempel
Busch Ag
250 Busch Drive
Sidney, MT 59270

Mr. Bruce Prevost
Horizon Resources
101 2nd Street N
E. Fairview, ND 59221

Mr. Mark Henson
Lansing NGL Services
7712 S. Yale Ave., STE 205
Tulsa, OK 74136

Mr. Dave Weller
Nortana Grain
415 9th Ave NE
Sidney, MT 59270

Mr. Will Colson
Pacific Steel
PO Box 1068
Sidney, MT 59270

Mr. John Kraft
Plains Midstream
PO Box 707
Yankton, SD 57078

Mr. Mike Bergman
Safflower Tech
12560 Highway 200
Fairview, ND 59221

Kelly Shearn
Tesorero
19100 Ridgewood Parkway
San Antonio TX 78259

Mr. Steve Herron
Wildcat Minerals
PO Box 18311
Golden, CO 80401

Glendive, MT 59330

Ms. Karen Svenby
Columbia Grain
PO Box 1969
Great Falls, MT. 59405

Mr. Cole Wirth
KC Sand
101 10th Ave SE
Sidney, MT 59270

Ms. Julie Sumner
NGL Supply Wholesale
61205 S. Yale Ave. STE 700
Tulsa, OK 74136

Mr. Matt Alexander
Oneok
34958 CO RD 122
Sidney, MT 59270

Mr. Les Riveland
Peavey Grain
PO Box 363
Fairview, MT 59221

Mr. Russell Johnson
R & J Ag Supply
591 10th Ave. SE
Sidney, MT 59270

Mr. Hank Berry
Sidney Sugars
35140 County Road 125
Sidney, MT 59270

Mr. Jerys Enget
Valley Crop Care
904 E. Main Street
Sidney, MT 59270

Mr. Clint Woods
WTPS
16082 37th Street NW
E. Fairview, ND 59221

<p>Mr. Alan Sarver Z & S Dust Control 22470 Bennett Road Rapid City, SD 57701</p>	

Karl Morell

Karl Morell

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed discontinuance in Docket No. AB-991 (Sub-No. 1X) was published on October 18, 2012, in the Daniels County Leader, a newspaper of general circulation in Daniels, Sheridan and Roosevelt Counties, Montana, on October 21, 2012, in the Sidney Herald, a newspaper of general circulation in Richland County Montana, and on October 24, 2012 in the McKenzic County Farmer, a newspaper of general circulation in McKenzic County, North Dakota as required by 49 C.F.R. § 1105.12

Dated February 11, 2013

A handwritten signature in black ink that reads "Karl Morell". The signature is written in a cursive style with a horizontal line underneath it.

Karl Morell